

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA- 370421 Phone No.02838-271165/66/67/68 FAX.No.02838- 271169/62
A. File No.	: CUS/ASS/MISC/841/2024-EA-O/o Pr-Commr-Cus-Mundra
B. Order-in- Original No.	: MCH/ADC/MK/115/2024-25 dated 05.08.2024
C. Passed by	: Mukesh Kumari, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra
D. Date of order /Date of issue	: 05-08-2024
E. Show Cause Notice No. & Date	: Waiver of SCN and Personal Hearing
F. Noticee(s)/Party/ Exporter	: M/s Sealed Nectar Impex, M-5/A, Common Services, Abu Fazal Enclave Part-I, Jaminagar, New Delhi-110025
G. DIN	20240871MO0000127031

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

"सीमा शुल्क आयुक्त (अपील),

7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009"

"THE COMMISSIONER OF CUSTOMS (APPEALS),

Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009."

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act
it must accompanied by -

- (i) उक्त अपील की एक प्रति और A copy of the appeal, and
- (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची - 1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. अपील जापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo:

6. अपील प्रस्तुत करते समय, सीमा शुल्क के, और सीमा शुल्क अधिनियम 1982, अपील (नियम) अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।

While subMithing the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

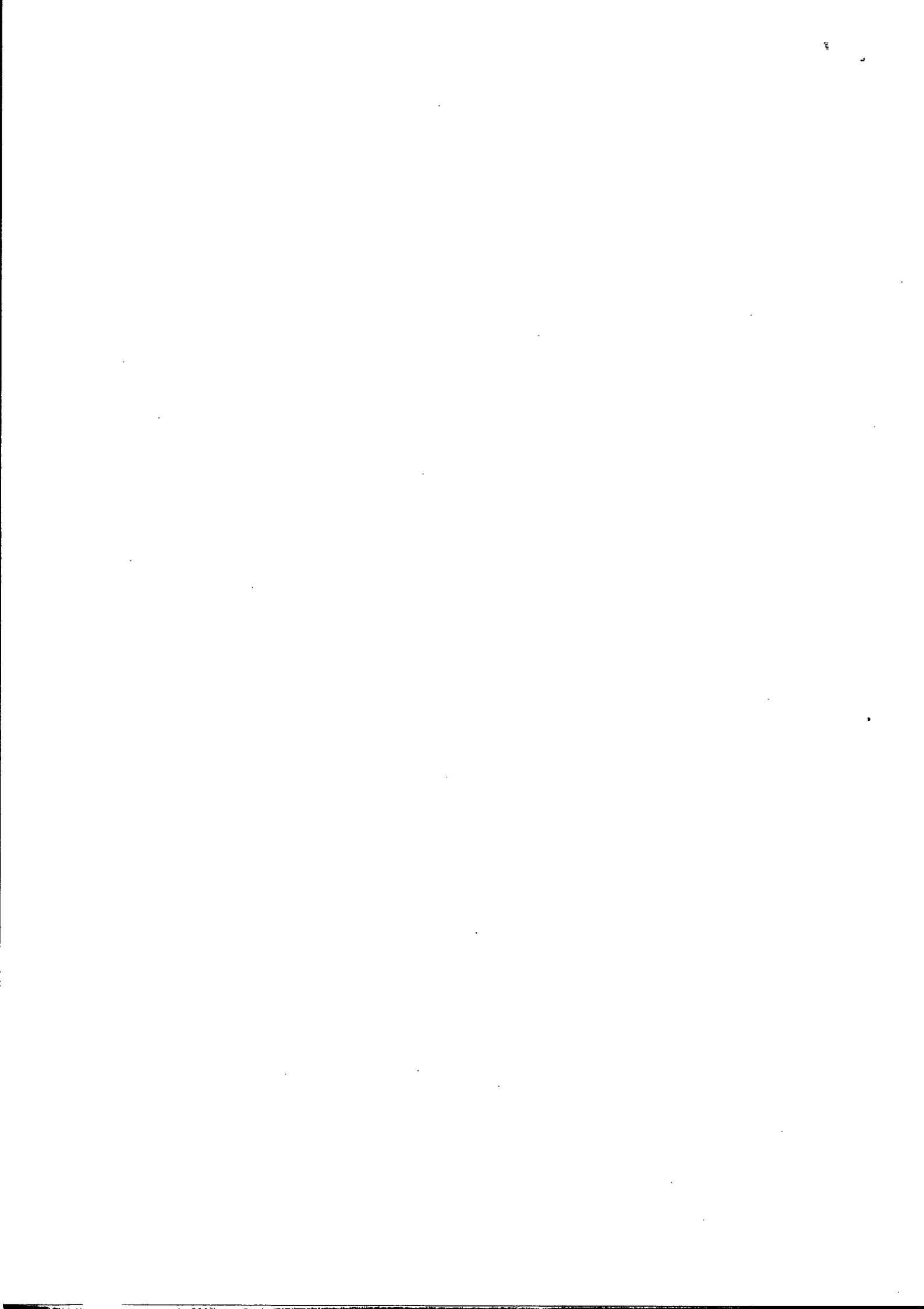
An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Subject:- Mis-declaration of cargo in Shipping Bill No.9462264 dated 27.04.2024 filed by M/s Sealed Nectar Impex -Reg.

BRIEF FACTS OF THE CASE:

M/s Sealed Nectar Impex, M-5/A, Common Services, Abu Fazal Enclave Part-I, Jaminagar, New Delhi-110025, having IEC No. BOIPA4625J, has filed a Shipping Bill No.9462264 dated 27.04.2024 through their CHA-M/s Venus Sea-Air Services Pvt. Ltd. for export of goods declared as "Long Grain Basmati Rice" and classified the same under CTH-10063020 and having the FOB value of Rs.42,42,510/-.

2. The exporter vide letter dated 21.05.2024 requested this office for Back to Town of the cargo due to the order being cancelled by their foreign buyer. On the request of the exporter for back to town of the



cargo this office sent a letter dated 21.05.2024 to the Superintendent, Docks Examination for examination of the cargo. The content of the letter is as:-

- (i) Whether goods found as declared in shipping bill or otherwise
- (ii) Adverse remark, if any regarding the export cargo
- (iii) Other notable information observation if any
- (iv) Whether the cargo has been put on hold by SIIB/DRI or any other agency
- (v) Whether the cargo is restricted or prohibited as per export policy.

3. In response of this office letter dated 21.05.2024, the Superintendent Docks Examination submitted his report point-wise as:-

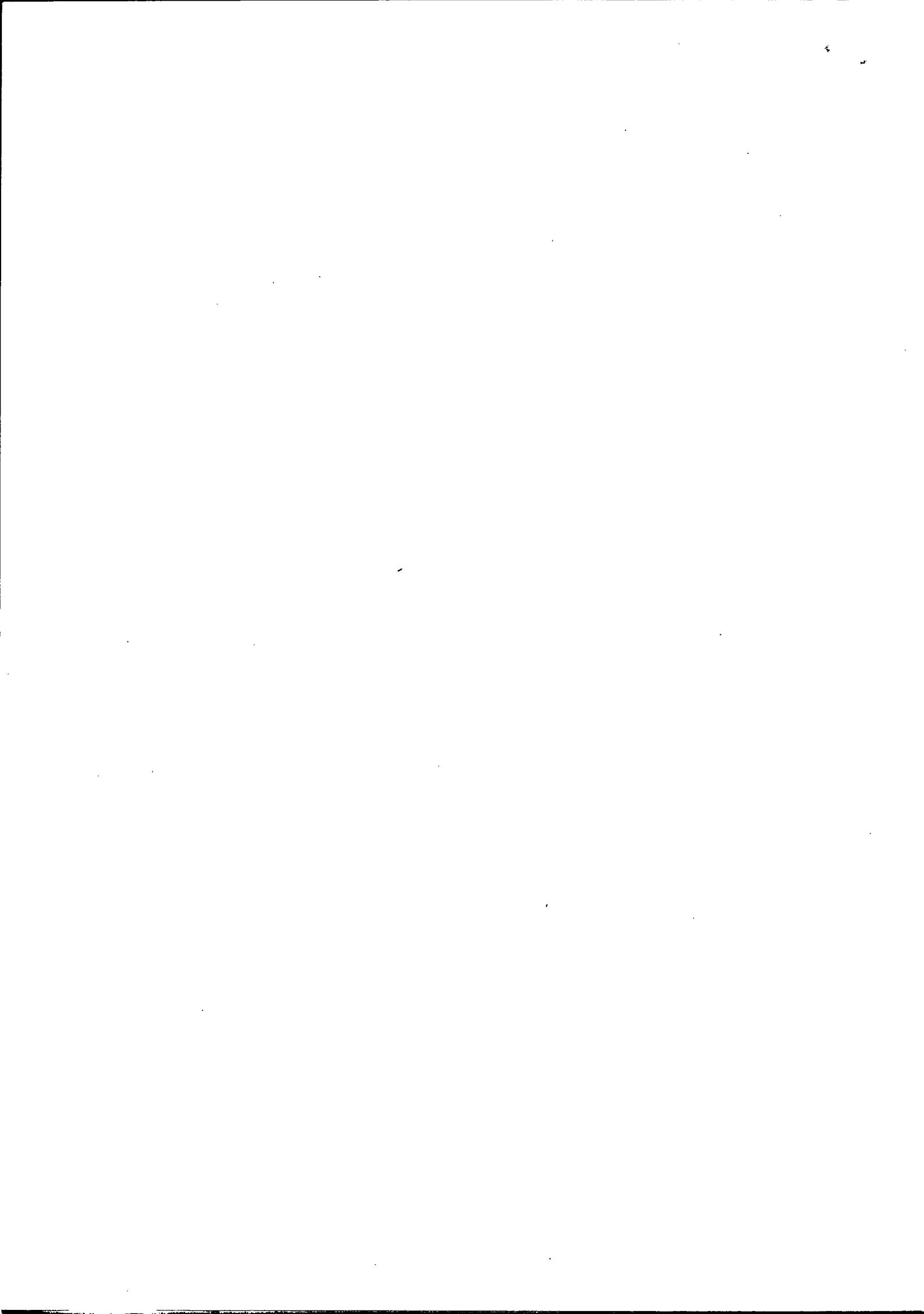
- (i) No, the goods declared as "Long Grain Basmati Rice" but on visual inspection the goods appears to be Non-Basmati White Rice.
- (ii) The goods appears to be mis-declared
- (iii) NIL
- (iv) NO
- (v) YES

4. In the Shipping Bill No.9462264 dated 27.04.2024, the exporter declared the cargo as Long Grain Basmati Rice under CTH-10063020. However, during the examination of the cargo, the Dock Officer on visual inspection found that the goods appear to be Non-Basmati White Rice which falls under CTH-10063090. From the above it appears that the instant case falls under the purview of Mis-declaration of the Export cargo.

5. Further, as per Notification No.20/2023 dated 20.07.2023 issued by DGFT the export of Non-Basmati White Rice is Prohibited. The relevant extracts of the said Notification is re-produced here-in-below :

ITC HS Codes	Description	Export Policy	Revised Export Policy
10063090	Non-basmati White Rice (Semi-milled or wholly milled rice, Whether or not polished or glazed:other)	Free	Prohibited

6. From the above facts, it appears that the Exporter appears to have failed to declare the correct classification of the goods attempted to export under the Shipping Bill No. 9462264 dated 27.04.2024. The goods covered under Shipping Bill No.9462264 dated 27.04.2024 needs to be re-classified under CTH-10063090 as Non-basmati White Rice. Thus, the Exporter has contravened the provisions of the Section 50 of the



Customs Act, 1962, which is re-produced here-in-below:

Section 50 : Entry of goods for exportation. -

(1) The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in such form and manner as maybe prescribed.

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:

- (a) the accuracy and completeness of the information given therein;*
- (b) the authenticity and validity of any document supporting it; and*
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.”.*

7 . From the above facts, it appears that the exporter made the violation of the export policy and therefore the goods attempted for export are liable for confiscation under Section 113(d) and 113 (i) of the Customs Act, 1962 which is re-produced as under:

SECTION 113. Confiscation of goods attempted to be improperly exported, etc. -

The following export goods shall be liable to confiscation as per:

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(i) any goods entered for exportation which do not correspond in respect of value or any material particular with



the entry made under this Act or in the case of baggage with the declaration made under section 77.

8. Whereas, on account of export goods liable for confiscation, the Exporter has made themselves liable for penal action under Section 114 (i) of the Customs Act, 1962 and the same is reproduced here-in-below :

SECTION 114 : Penalties for attempt to export goods improperly, etc. - Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -

(i) *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;*

9. In view of above facts, it appears that:-

(i) The classification of the goods declared by the Exporter under Shipping Bill No. 9462264 dated 27.04.2024 under CTH-10063020 as "Long Grain Basmati Rice" should not be rejected and re-classified under CTH-10063090 as "Non-Basmati White Rice";

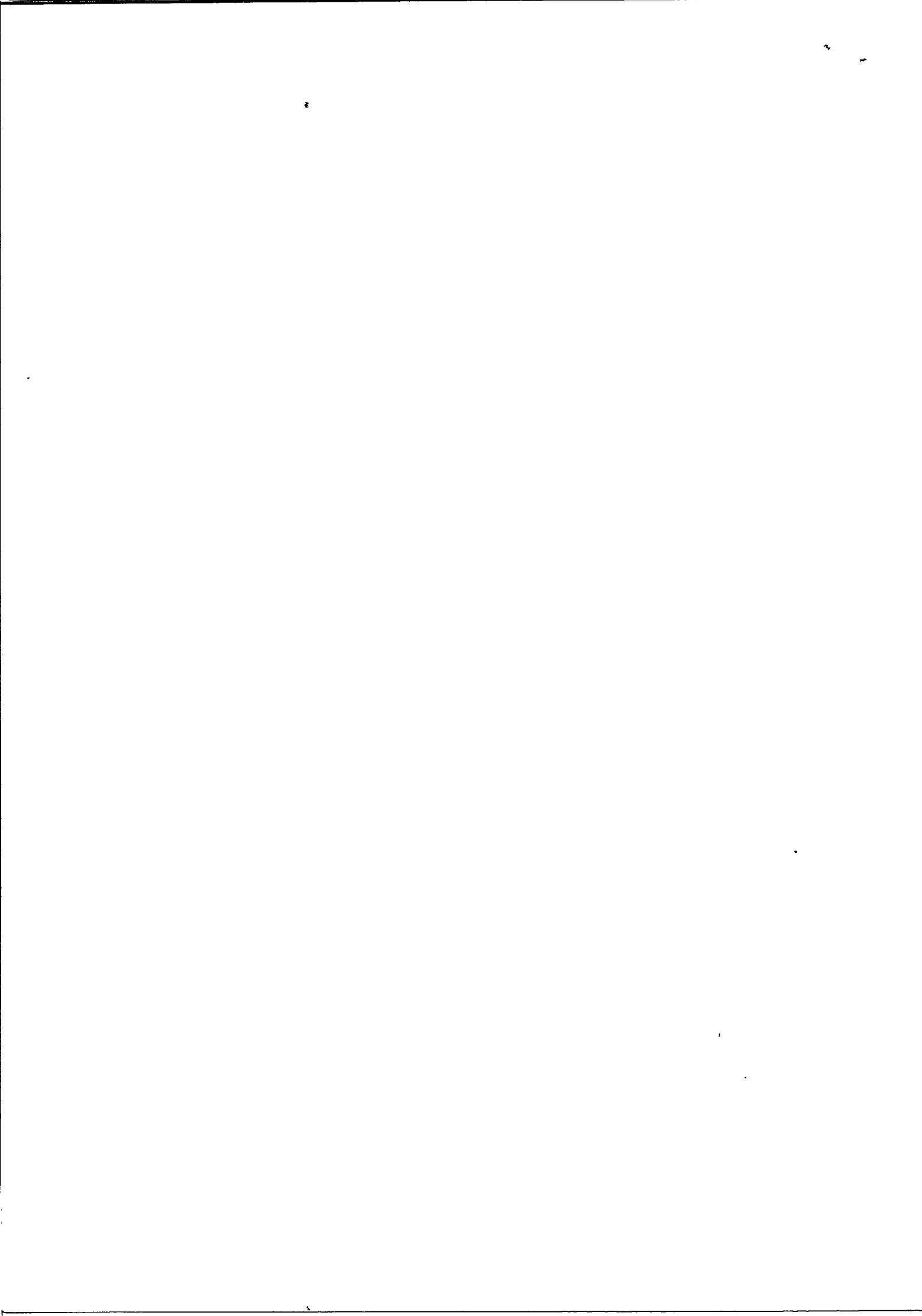
(ii) The goods covered under Shipping Bill No.9462264 dated 27.04.2024 having FOB Value of Rs.42,42,510/- should not be confiscated under Section 113 (d) and 113(i) of the Customs Act, 1962;

(iii) The penalty under Section 114 (i) of the Customs Act, 1962 should not be imposed upon the Exporter;

Submission made by the exporter:

10. The exporter vide letter dated 16.07.2024 submitted that they deal in Basmati and Non-Basmati rice (Local Sale). At the time of loading for export of Basmati Rice, their staff by mistake loaded the Non-Basmati Rice instead of Basmati Rice. They noticed their mistake when the cargo entered the CFS. As soon as they noticed their mistake, they have not registered the goods against above Shipping Bill. Now they want their cargo Back to Town to their Factory. They do not want any SCN and personal hearing in the case and they are ready to pay applicable fine and penalty for allowing Back to Town of their cargo lying in CFS. They requested to be lenient in imposing fine and penalty as it is human error.

DISCUSSION AND FINDINGS:



11. The exporter vide letter dated 16.07.2024 requested this office that they do not want any Personal Hearing and SCN and they requested for Back to Town of the Cargo. In view of above, as per principles of natural justice as provided in Section 122A of the Customs Act 1962 has been complied with and therefore, I proceed to decide the case ex parte.

11.1 The issues to be decided by me are:

- (i) The classification of the goods declared by the Exporter under Shipping Bill No.9462264 dated 27.04.2024 under CTH-10063020 as "Long Grain Basmati Rice" should not be rejected and re-classified under CTH-10063090 as "Non-Basmati White Rice";
- (ii) The goods covered under Shipping Bill No. 9462264 dated 27.04.2024 should not be confiscated under Section 113 (d) and 113(i) of the Customs Act, 1962 ;
- (iii) The penalty under Section 114 (i) of the Customs Act, 1962 should not be imposed upon the Exporter ;

Now, I proceed to decide the case issue-wise.

11.2 I find that the exporter declared the impugned rice attempted to export under Shipping Bill No.9462264 dated 27.07.2024 as "Long Grain Basmati Rice" classified under CTH-10063020 but pursuant to the outcome of the examination of the cargo, the Dock Officer on visual inspection found the good appears to be "Non-Basmati White Rice". As per Customs Tariff, Non-Basmati White Rice is classifiable under CTH-10063090 and therefore the same is required to be classified under CTH-10063090.

11.3 I find that as per Notification No.20/2023 dated 20.07.2023 issued by DGFT, the export of Non-Basmati White Rice is Prohibited. The goods were in violation of DGFT Notification No.20/2023 dated 20.07.2023. In view of above facts and discussion, I am of the view that the exporter has mis-declared and mis-classified the goods as "Long Grain Basmati Rice" under CTH-10063020 instead of "Non-Basmati White Rice" under CTH-10063090 which is prohibited to export. Therefore, I find that the goods attempted to export under Shipping Bill No.9462264 dated 27.04.2024 are liable for confiscation under Section 113(d) and 113(i) of Customs Act, 1962.

11.4 I find that Section 114 of the Customs Act, 1962 stipulates that:

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -



(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty ¹[²not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

11.5 I find that the impugned rice attempted to export under Shipping Bill No.9462264 dated 27.04.2024 was found to be "Non-Basmati White Rice" which are prohibited to export, therefore, in view of the above provisions of Section 114 of Customs Act, 1962, the penalty in this case is imposable under Section 114(i) of the Customs Act, 1962.

11.6 I also noticed that the exporter vide letter dated 16.07.2024 submitted that they deal in Basmati and Non-Basmati rice (Local Sale); that at the time of loading for export of Basmati Rice, their staff by mistake loaded the Non-Basmati Rice instead of Basmati Rice; that they noticed their mistake when the cargo entered the CFS; that as soon as they noticed their mistake, they have not registered the goods against above Shipping Bill and applied for Back to Town their cargo and therefore, they requested to be lenient in imposing fine and penalty as it is human error.

12. In view of the forgoing discussions and findings, I pass the following order:

ORDER

(i) I order to reject the classification of the goods attempted to export under Shipping Bill No.9462264 dated 27.04.2024 under CTH-10063020 as "Long Grain Basmati Rice" declared by the exporter and ordered to re-classify the same under CTH-10063090 as "Non-Basmati White Rice";



(ii) I order to confiscate the goods having FOB value of Rs.42,42,510/- (Rupees Forty Two Lakhs Forty Two Thousand Five Hundred and Ten only) covered under Shipping Bill No. 9462264 dated 27.04.2024 under Section 113 (d) and 113(i) of the Customs Act, 1962. However, I give the option to the exporter to redeem same for back to town purpose as requested by the exporter after payment of Redemption Fine of Rs. 5,00,000/- (Rupees Five Lakhs only) under Section 125 of the Customs Act, 1962;

(iii) I order to impose and recover Penalty of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) covered under Shipping Bill No. 9462264 dated 27.04.2024 under Section 114 (i) of the Customs Act, 1962;

13. This order is issued without prejudice to any other action that may be contemplated against the exporter or any other person(s) under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

Signed by
Mukesh Kumari
Date: 05-08-2024 13:24:18

(Mukesh Kumari)
Additional Commissioner (Export)
Customs House, Mundra

F.No. CUS/ASS/MISC/841/2024-EA

Dated:-05-08-2024

BY SPEED POST

To,
M/s Sealed Nectar Impex,
M-5/A, Common Services,
Abu Fazal Enclave Part-I,
Jaminagar, New Delhi-110025.

Copy to:- (1) The Deputy Commissioner(TRC)/RRA /Review
Section/EDI/Guard File.

